

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MURRAY RUBINSTEIN, et al.,)	
)	
Plaintiffs,)	Case No. 14-cv-9465
)	
v.)	Honorable Robert M. Dow, Jr.
RICHARD GONZALEZ and ABBVIE INC.,)	Honorable Maria Valdez
)	
Defendants.)	
)	

**DEFENDANTS' MOTION FOR LEAVE TO FILE A
SURREPLY BRIEF AND SUR-REBUTTAL REPORT IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants hereby respectfully move for leave to file a surreply brief and sur-rebuttal report in opposition to Plaintiffs' motion for class certification, which shall be submitted no later than July 30, 2018. In support thereof, Defendants state as follows:

1. Plaintiffs filed a motion for class certification on December 21, 2017 (Docket No. 103), as well as a supporting memorandum (Docket No. 105) and an expert report from Chad Coffman (Docket No. 106). On the same day, Plaintiffs requested relief from the Rule 7.1's page limit, and filed a brief of 25 pages. (Docket No. 101)
2. Defendants took the deposition of Coffman on February 22, 2018. On March 9, 2018, Coffman served a "Revision to Expert Report of Chad Coffman, CFA," which "present[ed] [his] revised analysis" "[b]ased upon certain questions raised in my deposition of February 22, 2018." (Docket No. 161-5)
3. Defendants filed their response brief in opposition to Plaintiffs' motion for class certification on April 19, 2018, accompanied by an expert report from Dr. Allan Kleidon.

(Docket Nos. 161 (sealed), 162 (public)) The Court had previously granted Defendants' unopposed motion to file an oversized brief of 30 pages. (Docket No. 152)

4. On June 14, 2018, Plaintiffs filed a 15-page reply brief in support of their motion for class certification. (Docket No. 192) The reply brief makes arguments that had not been made in Plaintiffs' opening brief, such as their new assertion that “[m]arket efficiency for options is often satisfied by proof that the market for the related security is efficient.” (*Id.* at 5 n.4) The reply brief also ostensibly changes the theory of liability for which Plaintiffs seek class certification. (*Compare id.* at 2-5 with Docket No. 105 at 9, 14) Moreover, the reply brief contains statements of fact and law that Defendants believe are incorrect, as well as characterizations of the reports and deposition testimony of both Coffman and Dr. Kleidon that Defendants believe are misleading.

5. Plaintiffs' reply brief attaches an “Expert Rebuttal Report of Chad Coffman, CFA.” (Docket No. 194) This “rebuttal” report is in large part not a rebuttal report, but new work by Coffman that could have been done originally, but was not. For instance, in response to Dr. Kleidon’s criticism that Coffman could not establish that option series traded efficiently without actually studying individual option series, Coffman does an entirely new analysis consisting of a limited study purporting to test some individual Shire option series. (*Id.* ¶¶ 20-22 & Ex. 1A-1X, Ex. 2) Specifically, Coffman states that he “performed an event study for each individual option series to test whether there was a statistically significant price movement on the alleged corrective disclosure.” (*Id.* ¶ 20) This does not rebut Kleidon’s work, which had indicated that Coffman’s initial “cause and effect” testing did not support Coffman’s conclusions regarding individual option series because it did not test individual option series. Rather, it is wholly new work that Coffman chose not to do at the outset. If “rebuttal” work includes any

analysis that an expert chooses to perform after being criticized for not doing sufficient work at the outset, experts would have strong incentives to withhold their substantive work until their “rebuttal” report and thereby deprive the opposition of a chance to respond.

6. Coffman’s report also purports to attack the opinions of Defendants’ expert, repeatedly (and inaccurately) calling his methodologies and conclusions “incorrect” (*id.* at 5, 9, 11, 16, 19), “irrelevant” (*id.* at 5, 14, 17), “speculative” (*id.* at 5, 16), “unfounded” (*id.* at 11), and “at odds with the methodology employed in [the literature].” (*Id.* at 9) Defendants submit that a sur-rebuttal report from Dr. Kleidon would assist the Court in resolving the dispute between Coffman and Dr. Kleidon.

7. On June 22, 2018, eight days after they filed their reply brief and Coffman’s rebuttal report, Plaintiffs produced the back-up material for the rebuttal report. (The parties have an agreement that back-up material may be produced up to seven days after the expert’s report is served. Thus, even by the parties’ agreement, Plaintiffs’ production was untimely.)

8. In light of the new legal arguments, factual arguments, and expert analyses set forth in Plaintiffs’ reply brief and Coffman’s rebuttal report, Defendants seek leave to file a surreply brief in opposition to Plaintiffs’ motion for class certification and to attach a sur-rebuttal report by Dr. Kleidon. Any surreply brief Defendants file will be limited to responding to arguments set forth for the first time in Plaintiffs’ reply brief; and any sur-rebuttal report by Dr. Kleidon will be limited to responding to and/or critiquing the arguments set forth in Coffman’s rebuttal report.

9. Defendants propose that the surreply brief shall be submitted no later than July 30, 2018, and shall not exceed 15 pages.

10. On July 2, 2018, before filing this motion, Defendants conferred with Plaintiffs' counsel, who indicated that Plaintiffs will oppose this motion. (Defendants have noticed this motion for July 12, 2018—later than the rules require—at Plaintiffs' request.)

* * *

WHEREFORE, Defendants respectfully request that the Court grant Defendants leave to file a surreply brief and sur-rebuttal report by July 30, 2018.

Dated: July 2, 2018

Respectfully submitted,

/s/ Joshua Z. Rabinovitz

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